ISSUE DATE: July 31, 1997

DOCKET NO. P-421/CI-97-498

ORDER TERMINATING INVESTIGATION AND CLOSING DOCKET

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey	Chair
Joel Jacobs	Commissioner
Marshall Johnson	Commissioner
Don Storm	Commissioner

In the Matter of A Commission Initiated Investigation Into the Rates for Customized Call Management Service and Business Call Transfer Service

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PROCEDURAL HISTORY

On October 19, 1995, in Docket No. P-421/EM-95-1083, US WEST Communications, Inc. (USWC) filed a proposal to increase the rates for Customized Call Management Services (CCMS). CCMS is the service name for a feature package marketed to business customers which consists of 3 services, CONSULTLINE (Call Hold), Call Transfer, and Three-Way Conferencing. USWC proposed to correct a pricing anomaly (Call Transfer by itself and CCMS, a three service package including Call Transfer, being both priced at $5.00) by increasing the CCMS 1-6 line rate by 20 percent (from $5.00 to $6.00), and by increasing the CCMS 7+ line rate by 29 percent, from $3.50 to $4.50.

On March 14, 1996, the Department filed comments on the USWC proposal. The Department recommended eliminating the pricing anomalies by reducing the rates for both Business and Residence Call Transfer service to $4.00. The Department estimated that the stimulation of consumption resulting from the lower prices would leave USWC approximately income neutral.

On January 22, 1997, the Commission issued an Order in Docket No. P-421/EM-95-1083 denying USWC's petition and initiating an investigation into the pricing anomaly for CCMS, CENTRON I and Call Transfer service. The investigation was assigned to the current docket: P-421/CI-97-498.

On April 7, 1997, the Commission, with no objection from the Department, issued an Order after reconsideration in Docket No. P-421/EM-95-1083 allowing USWC to implement its proposed rates and limiting investigation in the current docket (P-421/CI-97-498) to the pricing anomaly to CCMS and Business Call Transfer services. The price increase for CCMS was, of course, interim in nature and subject to the pending investigation.

On April 9, 1997, the Commission submitted a Notice of Comment and Response Comment Periods in Docket No. P-421/CI-97-498 which requested that the parties submit comments to the

Commission concerning the pricing anomaly issue.

On April 30, 1997, the Department submitted comments.

On May 12, 1997, USWC submitted reply comments.

On July 17, 1997, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

A. Background

In its April 7, 1997 ORDER AFTER RECONSIDERATION ALLOWING COMPANY TO IMPLEMENT RATES AND CONTINUING INVESTIGATION the Commission stated:

> . . . through all the events in this proceeding, one element remains clear: the need to investigate the pricing anomaly indicated in the filing. The Commission will, therefore, continue the investigation regarding the rates for US WEST's CCMS service and the rates for Business Call Transfer services which are a part of the CCMS package. The investigation should enable the Commission to determine **if a cure of the pricing anomaly is necessary**, and if so, how the cure should be effected. Order at page 3. Emphasis added.

B. Summary of Commission Analysis and Action

Having reviewed the record and heard the arguments of counsel, the Commission is not convinced that curing the pricing anomaly is necessary. The current rates, which are presumed reasonable, have not been shown to be unreasonable. Accordingly, the Commission will roll back the interim CCMS and Call Transfer-Business rates to their pre-petition level, terminate the investigation, and close the docket.

C. USWC

The pricing anomaly identified by USWC is this: the rate for CCMS (1-6 line service) is currently $5.00 while the rate for Business Call Transfer Service (one of the three services packaged as CCMS) is also $5.00. USWC proposed to eliminate this anomaly by increasing the price for CCMS (1-6 line service) to $6.00. In essence, USWC argued that this anomaly renders these rates unreasonable per se.

In addition to noting the pricing anomaly, USWC supported its proposed increase of the CCMS rate by noting that it has established $6.00 as a target rate for the service in all the states it serves. USWC suggested that customers would benefit from having its (USWC's) rates consistent in all the states it serves.

Finally, USWC argued that it should be granted some discretion in setting these rates and suggested that it was improper to be second-guessed by the Department or the Commission. The Company noted 1) that CCMS rates had not increased since 1988 and are above cost; 2) that CCMS feature packages compete with feature rich customer premise equipment, key systems, PBXs, and CENTRON resellers; 3) that the CCMS standard feature packages are market-based, not cost-based, and 4) that the increase in CCMS was appropriate to reflect "today's market environment."

USWC opposed the Department's recommendation to eliminate the pricing anomaly largely by decreasing the price for Business Call Transfer to $4.15. The Company argued that the Department's proposed price decrease would result in another pricing discrepancy: a la carte Call Waiting which provided less functionality than Business Call Transfer would be priced higher, $4.65.

USWC recommended the following rate design:

	Old Price	**USWC Recommendation**
CCMS 1-6 lines	$5.00	$6.00
CCMS 7+ lines	$3.50	$4.50
Call Transfer-Business	$5.00	$5.00

D. The Department

The Department reviewed the origin of the pricing "anomaly" under consideration in this docket. The Department recalled that in Docket No. P-999/C-93-90, USWC proposed increasing the standard feature package rate for CCMS 1-6 lines from $5.00 to $6.00 and for CCMS 7+ lines an increase from $3.50 to $4.00. USWC also proposed lowering the rate for Business Call Transfer service from $6.00 to $5.00. At that time, Call Transfer service had a rate that was $1.00 higher than the CCMS 1-6 line feature package.

The Department recalled further that it had opposed USWC's proposal to increase the rate for the CCMS standard feature package because the record showed that due to price elasticity the Company's overall revenues would decline even though prices were being increased. The Department had noted that there is no advantage to customers or the company if a rate increase results in a revenue reduction. Consistent with that point, the stipulation submitted to the Commission on October 31, 1994 removed the rate increases for the standard CCMS package. The stipulation, however, did retain the proposal by USWC to reduce the rate for Business Call Transfer service from $6.00 to $5.00. In sum, then, pursuant to the parties stipulated agreement the price of Call Transfer and the CCMS package became the same ($5.00).
In its April 30, 1997 recommendation, the Department supported its recommendation that the pricing anomaly should be corrected by reducing the price of Call Transfer. The Department

rejected USWC's objection (noted above) that Call Transfer was functionally a superior service to Call Waiting and, therefore, should be priced higher than Call Waiting. The Department cited the tariff descriptions for both services and noted that with Call Transfer service there is no signaling to the customer that another call has been placed to the customer's line. The Department argued that this is the very reason a customer chooses to purchase Call Waiting. Thus, it seems that the functionality provided by Call Waiting is unavailable with Call Transfer service. The Department concluded that it is far from clear that one service should be priced higher than the other.

The Department recommended the following rate design:

	Old Price	Department Recommendation
CCMS 1-6 lines	$5.00	$5.10
CCMS 7+ lines	$3.50	$3.60
Call Transfer-Business	$5.00	$4.15

E. Commission Analysis

USWC has not borne its burden of persuading the Commission that the current rates are unreasonable. The pricing anomaly in question resulted from a stipulated agreement between USWC and the Department reviewed and approved by the Commission as reasonable in the context of the Company's over all rates. That certain anomalies may occur does not show, without more, that the rates charged with being anomalous are, by reason of the fact alone, unreasonable.

USWC attempted to show that the current rates are unreasonable but failed to do so. To illustrate:

1. In the current context and USWC proposal, pricing uniformity in each of the states served by USWC would be achieved by raising the price of CCMS for Minnesota customers. This would not be a benefit for Minnesota customers. In addition, USWC has not persuaded the Commission that establishing uniform prices for USWC's services in each of the several states is so valuable for the Company that it would, for example, initiate a lowering of the rates in Minnesota if Minnesota rates were higher than in other states. Furthermore, the Company has acknowledged that at current rates, the service is priced above cost and, hence, contributes to the Company's margin. In short, the fact that the price of CCMS in Minnesota is lower that what it is in most other states where the Company operates does not render or even tend to show, in and of itself, that the Minnesota price is unreasonable.

2. The Company's request that the Commission honor the Company's judgment and allow it to raise this price "to reflect today's market environment" is not understood. The Commission does not find that raising the price of CCMS is a rational response to the competition that USWC alleged it is experiencing.

Moreover, the legislature has determined that the service in question is subject to emerging competition, not subject to effective competition itself. As such, the service remains rate-regulated. It has not been classified as subject to effective competition, either by the legislature nor by the Commission pursuant to the procedure provided by the legislature provided for that purpose. Minn. Stat. § 237.59 (1996). Allowing USWC to treat CCMS as a service subject to effective competition would violate the legislature's specific instructions. The Commission will not abdicate its responsibility to require USWC, if the Company wishes to have CCMS treated as a service subject to competition, to follow the proper procedure, make the requisite showings regarding the service, and obtain Commission reclassification of the service, as required by the legislature.

Review of a relevant statute indicates how far USWC’s request is from the legislatively prescribed procedure. Minn. Stat. § 237.59, subd. 8 (1996) authorizes utility discretion to change rates of a service that is subject to emerging competition, but under circumstances very different from those presented in this case. The statute states in part:

> A telephone company that has **a petition pending** before the commission under this section **to declare a service competitive** may **decrease** its price for that service without notice while the commission considers the petition. Emphasis added.

In this case, USWC has not filed a petition to reclassify the services in question and is seeking a rate **increase** rather than a rate decrease as addressed in the statutory scenario.

ORDER

1. The Commission hereby discontinues the interim rates authority that it granted USWC in the Commission's April 7, 1997 Order in Docket No. P-421/EM-95-1083 for CCMS pending the outcome of the investigation and final decision in this matter. Since the Company has not implemented those interim rates, the currently tariffed pre-petition rates shall simply continue in effect. USWC's pre-petition rates were and remain as follows:

CCMS 1-6 lines	$5.00
CCMS 7+ lines	$3.50
Call Transfer-Business	$5.00

2. The investigation in this matter is hereby terminated and the docket closed.

3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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